FILE COPY

Office-Supreme Court, U.S.
FILED
FEB 2 1966
JOHN F. DAVIS, CLERK

No. 776

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

JACQUES M. SCHIFFER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

Reply Brief for Petitioner

HARVEY M. SILETS,
7 South Dearborn Street
Chicago, Illinois
Attorney for Petitioner

CHARLES R. PURCELL, JR.
41 East Pearson Street
Chicago, Illinois
Of counsel.

UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL. LA review 5-6581

AUTHORITIES CITED

Cases

PAGE

Cheff v. Schnackenberg, No. 67; (7th Cir.), 341 F.2d 548 3

Harris v. United States, ... U.S. ...., 15 L.Ed. 2d 240, 242 2

Sacher v. United States, 343 U.S. 1, 10, 11 ..... 1, 2, 3

United States v. Barnett, 376 U.S. 681, 695, n.12 3

Miscellaneous

Rule 42(a) F.R. Crim. P. 1, 2

18 U.S.C. 1 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 776

JACQUES M. SCHIFFER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

Reply Brief for Petitioner

Question 1. Respondent's argument entirely overlooks and totally fails to answer the pervading issue raised in Point 1 of the Petition: does Rule 42(a) F.R. Crim. P., as read in light of *Sacher* v. *United States*, 343 U.S. 1, permit the imposition of summary punishment, well after the need for immediate control of the proceeding has ended, for acts unnoted at the time they occurred?

The Court of Appeals had answered affirmatively by stating that warnings by the Court were not essential

where "the conduct was clearly contemptuous" (App. 6). Respondent however, has totally failed to meet this issue and may have conceded it, since it has confined its answer to strained efforts to create warnings from the improbable assumption of an angered tone of voice (R. br. 5) and an ambiguous comment, in the presence of the jury, directing that a matter be taken up later. (R. br. 5; R. 3671).

To permit even "clearly contemptuous" acts, whatever they may be, to go unnoted by a judge until any undefined time long after they have occurred in his presence, overlooks the reason for the warning or the taking note of the acts. Its purpose is to perform that instant action necessary to control the proceedings and thereby stop any further contemptuous conduct. It is not to notify the contemnor that his actions are contemptuous. Thus the "speedy punishment [of Rule 42(a) F.R. Crim. P.] . . . necessary in order to achieve 'summary vindication of the courts' dignity and authority' ", *Harris* v. *United States*, ... U.S. ....., 15 L.Ed. 2d 240, 242, is postponed in favor of "speedy" notification, *Sacher* v. *United States*, 343 U.S. 1, 10. The import of both is to immediately vindicate the dignity and authority of the Court and prevent further violations. Thus some warning, or taking note of the act, is necessary, contrary to the holding of the Court of Appeals in lieu of the immediate punishment.

If respondent urges that irrespective of the foregoing, warnings were in fact given in the trial below, this court should inform the bench and bar of some standard by which the bench may act to take note of indecorous acts, and by which the bar may be thus informed. Though petitioner earnestly contends no warnings were here given, certainly a repeated "all right" from the Court at the conclusion of argument, or a caution against unnecessary

argument (R. br. 5) are insufficient to inform a contemnor and thereby control the proceedings. Without some standard laid down by this Court, trial judges will be free to await "the close of the trial to pounce upon [counsel] for some offense unnoted at the time it occurred." *Sacher* v. *United States,* 343 U.S. 1, 10, 11, or noted so ambiguously as to constitute no notification whatsoever.

Question 2. Respondent has replied to petitioners' contention that he was constitutionally entitled to the right of trial by jury by completely ignoring the fact that this court has granted certiorari on this issue in *Cheff* v. *Schnackenberg,* No. 67. Cheff had been held in criminal contempt of the United States Court of Appeals for the Seventh Circuit, 341 F.2d 548, and sentenced to six months imprisonment, the maximum permitted as a petty offense, 18 U.S.C. 1.

Notwithstanding, respondent urges only that since petitioner's sentence of sixty days was well within the maximum limits of a petty offense, even under the *dictum* of *United States* v. *Barnett,* 376 U.S. 681, 695, n.12, petitioner was not constitutionally entitled to a trial by jury (R. br. 6-7). But it matters not whether the sentence be six months, sixty days, or six minutes, for this court has undertaken to decide whether a sentence which is *within* the limits of a petty offense is constitutionally permissible without granting the right to trial by jury.

Petitioner submits the issue involved in *Cheff* is also presented in this case, and, accordingly, certiorari should be granted.

Questions 3, 4 and 5. These questions have been fully and adequately presented by the petition and respondent has failed to raise any issue not fully answered by the petition.

For all of the reasons set forth in the petition and this reply we urge that a writ of certiorari be issued.

Respectfully submitted,

HARVEY M. SILETS,
7 South Dearborn Street
Chicago, Illinois
Counsel for Petitioner

CHARLES R. PURCELL, JR.
41 East Pearson Street
Chicago, Illinois
Of counsel.